

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6096 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MIJAR PANDULIK SHRINIVAS                      BHANDARI

Versus

STATE OF GUJARAT

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Appearance:

MR PV HATHI for Petitioner

MR VM PANCHOLI, AGP, for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/07/1999

ORAL JUDGEMENT

In this petition under Articles 226/227 of the Constitution the petitioner is challenging the order dated 11.6.1991 passed by the Additional Chief Secretary, Revenue Department (Appeals) of the State Government rejecting the petitioner's revision application against the order dated 30.4.1990, passed by the Collector, Junagadh, by which the Collector had dismissed the

petitioner's revision application against the order dated 20.3.1989, passed by the Asst. Collector for setting aside the revenue entries 2484, 2485, 2486 in respect of the lands in question at village Bhod, Taluka Ranavav, District Junagadh (now known as Porbandar District).

2 The petitioner purchased the lands in question by registered sale deed on 5th June 1986 being the lands admeasuring about 20 acres in different survey numbers. The mutation entries were certified in November 1986. On 25.1.1988 the Asst. Collector issued notice under section 108(6) of the Bombay Land Revenue Code alleging that the petitioner was no an agriculturist as the petitioner did not have any agricultural land in Saurashtra or Gujarat and therefore there was violation of Section 54 of the Saurashtra Gharkhed Tnancy Settlement & Agricultural Lands Ordinance, 1949. The petitioner pointed out that he was holding the agricultural land in the State of Karnataka and that therefore he was an agriculturist; that in any view of the matter the proceedings were initiated after unreasonable delay; the petitioner had invested large amounts for development of the lands and constructed well and purchased agricultural implements and that the petitioner was personally cultivating the said land in question. The Asst. Collector passed the impugned order holding that the petitioner did not have any agricultural land within the State of Gujarat and, therefore, the transaction was invalid. The petitioner's revision applications were dismissed by the Collector and the State Government and therefore the present Special Civil Application.

3 At the hearing of this petition, Mr P.V.Hathi, learned counsel for the petitioner, has relied upon the decision of the Apex Court in the case of MOHAMAD KAVI MOHAMAD AMIN V. FATMABAI IBRAHIM in Civil Appeal No.5023 of 1985 decided on 22.8.1996 (1997 SAR (Civil) Supreme Court 783) for contending that even when no time limit is prescribed for such exercise of power under a Statute, such power cannot be exercised at any time. In the said decision, reference is also made to the decision of this Court rendered by Hon'ble Mr Justice S.B.Majmudar ( as his Lordship then was) in the case of STATE OF GUJARAT V. JETHMAL BHAGWANDAS DAS in Special Civil Application No.2770 of 1979 decided on 1.3.1990 wherein in respect of similar inquiry under section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948, the Apex Court held that initiation of proceedings after delay of more than one year was unreasonable because the purchaser had made investment in the interregnum.

In the instant case also Mr P.V.Hathi, learned counsel for the petitioner, points out that the petitioner had taken a loan by mortgaging the lands in question and the petitioner had also dug up a well and developed the land after purchasing the land on 5.6.1986. The mutation entries were certified in November 1986. However, the Asst. Collector issued notice on 25.1.1988 i.e. after more than one year. Nothing is brought on record to justify the delay in initiation of the proceedings.

4 However, Mr V.M.Pancholi, learned AGP, has submitted that in view of the decision of this Court in 1987 (2) GLR 760 if the order is illegal and void ab initio, action can be taken at any time.

However, the aforesaid decision will not apply to the facts of the present case because, in the aforesaid case NA permission was granted by the Taluka Development Officer who had no authority or jurisdiction to grant such permission and therefore the government initiated proceedings for cancelling the order of the Taluka Development Officer. It was in the said factual background that this Court has laid down the aforesaid principle. In the facts of the present case, the principle enunciated in the aforesaid case will not apply. Therefore, it is required to be held that initiation of proceedings by the Asst. Collector was beyond reasonable time. The impugned orders at Annexures-F, G and H are, therefore, quashed and set aside.

Rule is made absolute to the aforesaid extent with no order as to costs.

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(mohd)